



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

www.southernshores-nc.go

May 2, 2017

COUNCIL MEETING-5:30 P.M.-PITTS CENTER

1. Opening

- A. Call Meeting to Order (all citizens interested in offering Public Comment are reminded to sign up.)
- B. Pledge of Allegiance
- C. Moment of Silence
- D. Amendments to / Approval of Agenda
- E. Consent Agenda **(TAB 1)**
 - i. Minutes March 21, 2017
 - ii. Budget Amendment #18 Intra-Departmental Budget Transfer for HX Matthew Recovery

2. Employee Recognition

- A. Jeremy Hemilright-10 Years of Service

3. Staff Reports

- A. Town Planner
- B. Police Chief
- C. Fire Chief, Southern Shores Volunteer Fire Department
- D. Town Manager's Report – incl. announce filing of proposed FY 2017-2018 Operating Budget/recommend June 6, 2017 Public Hearing
- E. Town Attorney's Report – incl. recommended options for Planning Board consideration to clarify "accessory structures" (Town Code Sec. § 36-202 (b)(2)) pertaining to enclosed living spaces, and "Dwelling Unit" (Town Code Sec. § 36-57).

4. Board Reports

- A. Planning Board

5. General Public Comment (Limit: 3 minutes per speaker.)

(Note: All matters heard or considered by the Council are subject to possible action by the Council.)

6. Old Business **(TAB 2)**

- A. Public Hearing: April 4, 2017 Preliminary Assessment Resolution for Beach Nourishment Project
- B. Consideration of "Resolution Directing That A Beach Nourishment Project Be Undertaken and Specially Assessed"
- C. Public Hearing: "Objections to Completion of Preliminary Assessment Roll for Beach Nourishment Project"
- D. Consideration of "Resolution Confirming Assessment Roll And Levying Assessments For A Beach Nourishment Project"
- E. Consideration of Budget Amendment #17, for Funding Special Assessment portion of Beach Nourishment Project Prior to Assessment Collection
- F. Consideration of Interlocal Agreement Between Dare County and Town of Southern Shores for Beach Nourishment Project

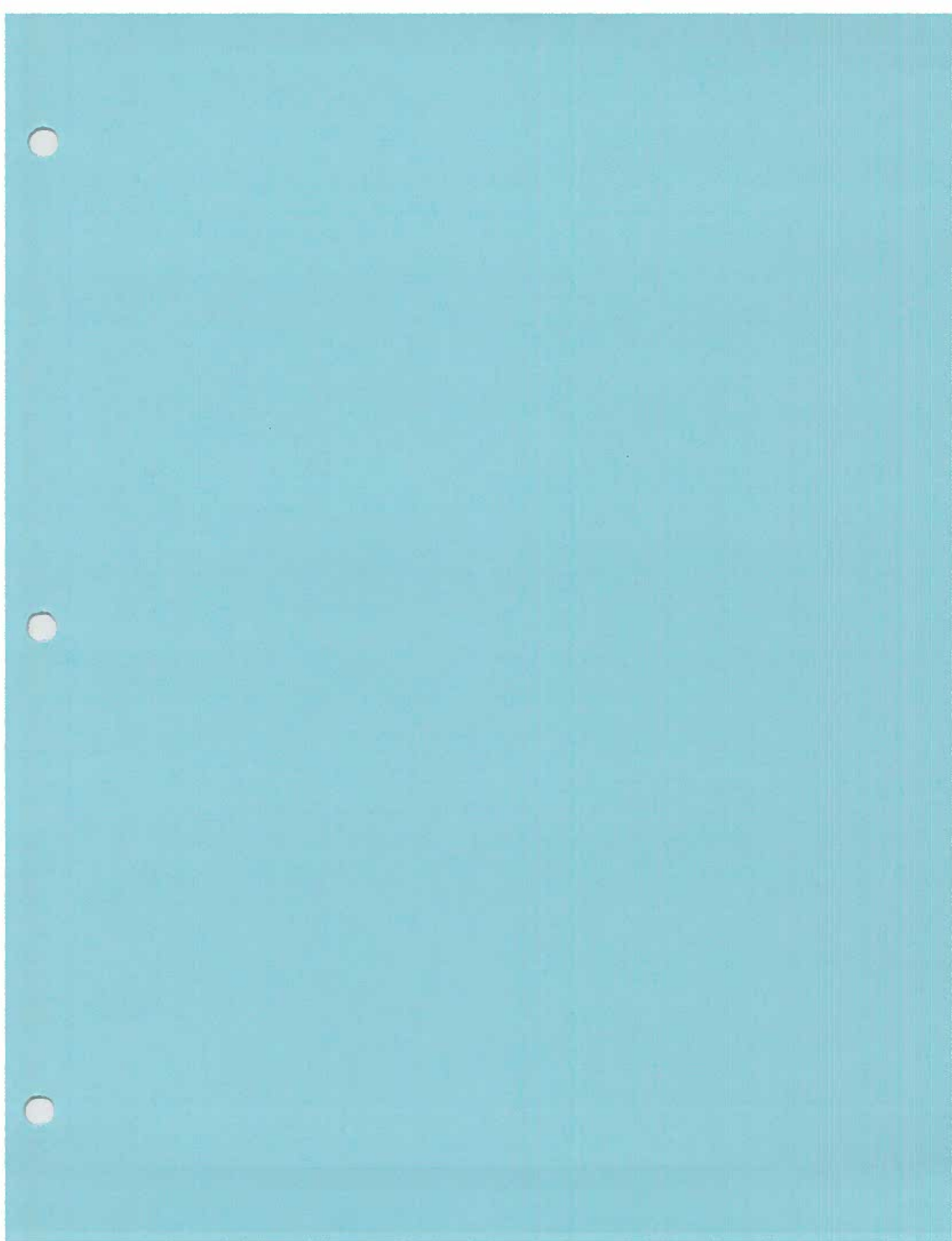
7. New Business

8. General Public Comment (Limit: 3 minutes per speaker.)

9. Other Business

- A. Mayor's Comments & Responses
- B. Council Member's Comments & Responses

10. Adjourn



**Town of Southern Shores
Budget Amendment Number # 18**

[illegible]

Explanation: Intra-Departmental transfer-Final Billing. Cost for Crowder- Gulf disposal at ARSWA for Hurricane Matthew Recovery

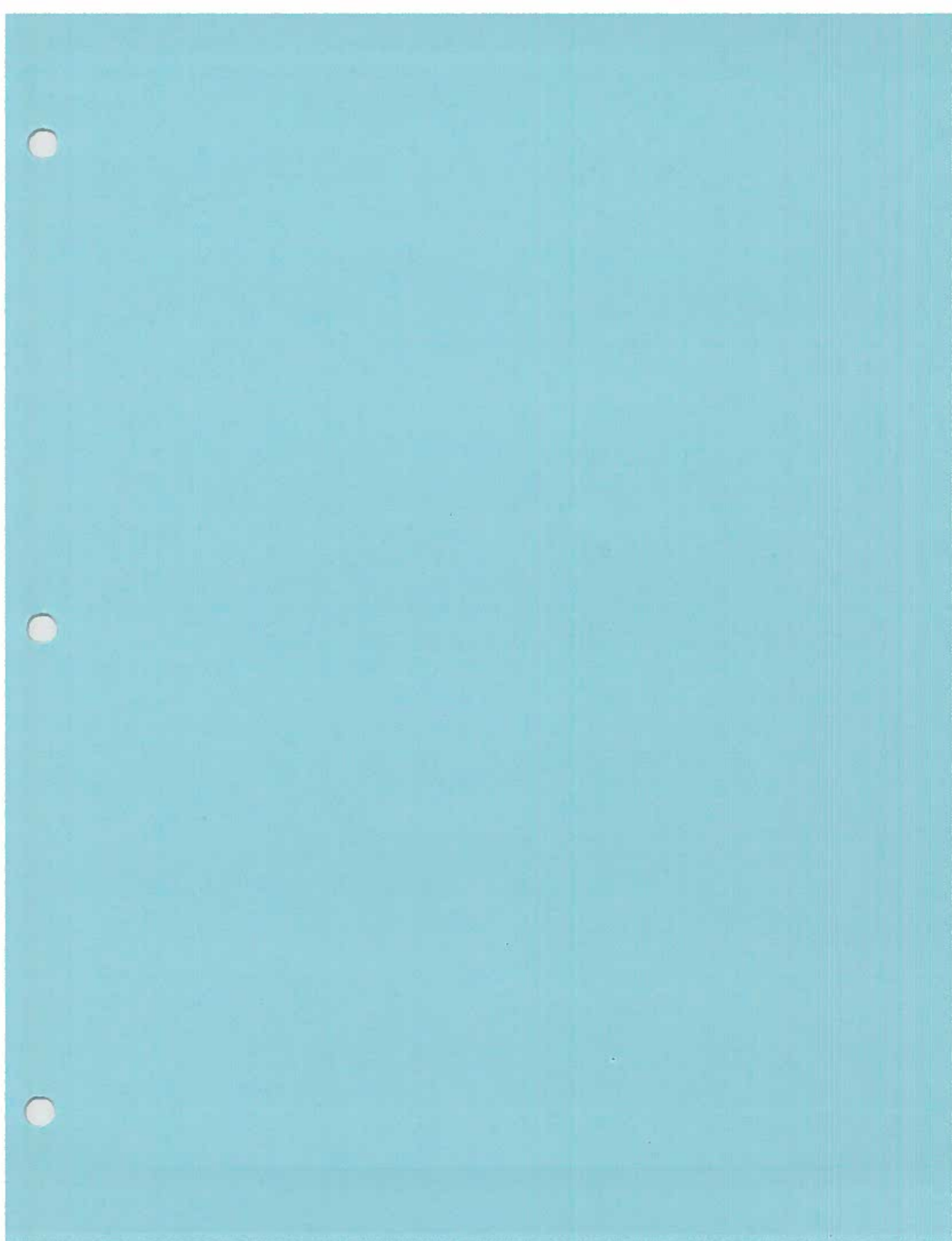
Recommended By:

J. Peter Rascoe, III

Approved By:

Tom Bennett, Mayor

Date _____





Town of Southern Shores

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7
8 **RESOLUTION DIRECTING THAT A BEACH NOURISHMENT PROJECT**
9 **BE UNDERTAKEN**
10 **AND**
11 **SPECIALY ASSESSED**
12

13 **WHEREAS**, the property owners of some of the benefitted property shown on
14 the attached Exhibit A (the "Assessed Parcels") filed a petition (the "Petition") with the
15 Town of Southern Shores (the "Town") requesting a special assessment for the costs of
16 acquiring, constructing, reconstructing, extending, or otherwise building or improving
17 beach erosion control or flood and hurricane protection works via a proposed beach
18 nourishment project (the "Project");
19

20 **WHEREAS**, the Project as proposed will be an engineered beach nourishment
21 project along approximately 1,500 feet of public trust ocean beach at the southern-most
22 end of the Town of Southern Shores town limits, including engineered placement of
23 approximately 1,000 feet of sand to be tapered north of the 1,500 feet as a necessary
24 function of the Project;
25

26 **WHEREAS**, the total cost of the Project is estimated to be \$1,000,000, and the
27 Town's portion of said cost is estimated to be \$500,000. The Petition has requested an
28 assessment of 30% of the Town's estimated project cost in the amount of \$150,000. The
29 remaining 70% of the Town's estimated project cost, or \$350,000, shall be paid from the
30 general revenues of the Town;
31

32 **WHEREAS**, the signatories to the Petition and the Town Council have concluded
33 that levying assessments based upon the area of the Assessed Parcels as shown on the
34 Dare County Tax Department records is the method that will most accurately assess each
35 lot or parcel of land subject to the assessments according to the benefits conferred upon it
36 by the Project;
37

38 **WHEREAS**, the signatories to the Petition and the Town Council have concluded
39 that the Assessed Parcels will be benefitted by the Project;
40

41 **WHEREAS**, the Town Clerk has certified to the Town Council that the Petition
42 is sufficient in all respects and in conformity with all the requirements of Chapter 160A,
43 Article 10 and 10A of the General Statutes of North Carolina; and
44

45 **WHEREAS**, a preliminary assessment resolution was adopted by the Town
46 Council and a public hearing thereon duly held.
47

1 **NOW, THEREFORE BE IT RESOLVED**, pursuant to Chapter 160A, Article
2 10 and 10A of the General Statutes of North Carolina, that the Town Council of the
3 Town of Southern Shores, North Carolina adopts this resolution to undertake the Project
4 and impose special assessments as follows:

- 5
- 6 1. The Petition is found to be sufficient in all respects.
- 7
- 8 2. The Town shall undertake the Project.
- 9
- 10 3. The Project will be an engineered beach nourishment project along
11 approximately 1,500 feet of public trust ocean beach at the southern-most
12 end of the Town of Southern Shores town limits, including engineered
13 placement of approximately 1,000 feet of sand to be tapered north of the
14 1,500 feet as a necessary function of the Project.
- 15
- 16 4. The assessments will be levied against the Assessed Parcels based upon
17 the area of the parcels as shown on the Dare County Tax Department
18 records as of the date of this resolution. The approximate boundaries of the
19 assessment area are shown on Exhibit A.
- 20
- 21 5. The Assessed Parcels will be assessed at 30% of the Town's estimated
22 cost for the Project in the total aggregate amount of \$150,000 for the
23 Assessed Parcels. The Town will pay the remaining 70% of the Town's
24 estimated cost for the Project, or \$350,000, from the general revenues of
25 the Town.
- 26
- 27 6. No assessments shall be held in abeyance. Assessments shall be due on the
28 same schedule as ad valorem taxes for the years that the assessments are
29 billed.
- 30
- 31 7. The terms of the assessment will be as follows:
- 32 a. This assessment will be assessed to the property owners in five (5)
33 equal annual installments.
- 34 b. Installment payments shall be due and payable on the same dates
35 as of ad valorem property taxes.
- 36 c. Interest and penalties shall accrue on the assessment amounts in
37 accordance with the rates and procedures for ad valorem taxes.
- 38 d. The assessed property owner has the option to pay all of their total
39 assessment in one (1) payment without incurring interest. This
40 payment must be paid within thirty (30) days after the publication of
41 the notice that the final Assessment Roll has been confirmed.
- 42

43 Adopted this ____ day of May, 2017.

44
45 _____
Tom Bennett, Mayor

46 Attest:

47 _____
48 Sheila Kane, Town Clerk

The "Southern Shores Beach Erosion Control Service District-South", is identified all those residential-zoned real properties, being parcels of land located in the Town of Southern Shores, Dare County, North Carolina and situated north of the southern-most Town Limit of the Town of Southern Shores also being the northern-most Town limit of the Town of Kitty Hawk, East of the eastern right-of-way boundary of North Carolina State Highway 12, West of the Atlantic Ocean, and South of the southern boundary of a parcel of land owned by the Southern Shores Civic Association, Inc., Dare County Parcel Identification Number (PIN) 987713035293 and commonly known as "Ocean View Loop Beach Access".

Map (yellow highlighted area):





Town of Southern Shores

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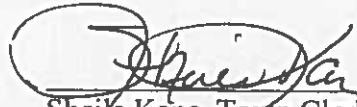
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**CERTIFICATE SHOWING THAT PRELIMINARY RESOLUTIONS WERE
MAILED TO OWNERS OF ALL PROPERTY SUBJECT TO ASSESSMENT
FOR BEACH NOURISHMENT PROJECT**

TO THE HONORABLE MAYOR AND TOWN COUNCIL OF THE TOWN OF
SOUTHERN SHORES:

I, Sheila Kane, Town Clerk of the Town of Southern Shores, North Carolina, do hereby certify that copies of the *Preliminary Assessment Resolution for Beach Nourishment Project Assessment* that was adopted on the 4th day of April, 2017, pertaining to the proposed beach nourishment project that would benefit the property owners of those properties identified in the attached Exhibit A, were mailed by first class mail on the 17th day of April, 2017 to the owners of all property subject to assessment should the project be undertaken.

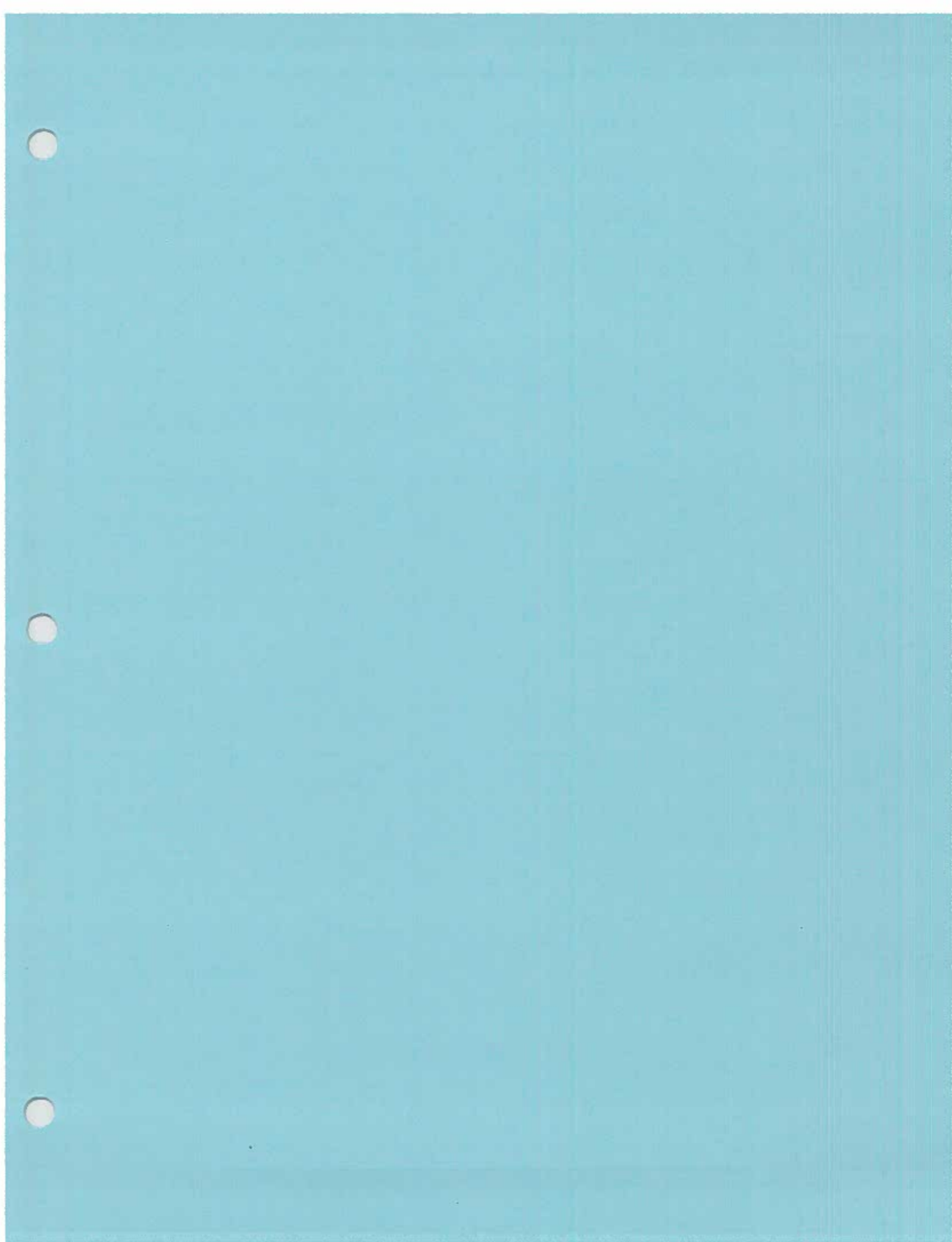
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Southern Shores, North Carolina, this the 17th day of April, 2017.


Sheila Kane, Town Clerk

The "Southern Shores Beach Erosion Control Service District-South", is identified all those residential-zoned real properties, being parcels of land located in the Town of Southern Shores, Dare County, North Carolina and situated north of the southern-most Town Limit of the Town of Southern Shores also being the northern-most Town limit of the Town of Kitty Hawk, East of the eastern right-of-way boundary of North Carolina State Highway 12, West of the Atlantic Ocean, and South of the southern boundary of a parcel of land owned by the Southern Shores Civic Association, Inc., Dare County Parcel Identification Number (PIN) 987713035293 and commonly known as "Ocean View Loop Beach Access".

Map (yellow highlighted area):







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RESOLUTION CONFIRMING ASSESSMENT ROLL AND LEVYING ASSESSMENTS FOR A BEACH NOURISHMENT PROJECT

WHEREAS, the Town Council for the Town of Southern Shores, North Carolina has on this day held a public hearing, after due notice as required by law, on the Preliminary Assessment Roll for a proposed beach nourishment project along approximately 1,500 feet of public trust ocean beach at the southern-most end of the Town of Southern Shores town limits, which beach nourishment project will involve acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works (the "Project"); and

WHEREAS, the Project more generally affects those parcels located North of the southern-most Town Limit of the Town of Southern Shores, East of the eastern right-of-way boundary of North Carolina State Highway 12, West of the Atlantic Ocean, and South of the southern boundary of a parcel of land owned by the Southern Shores Civic Association, Inc. with a Dare County Parcel Identification Number of 987713035293; and

WHEREAS, the Town Council for the Town of Southern Shores, North Carolina has heard all those present who requested to be heard, and has found the said Assessment Roll to be proper and correct.

NOW, THEREFORE, BE IT RESOLVED by the Town Council for the Town of Southern Shores, North Carolina that:

1. The Assessment Roll for the Project is hereby declared to be correct, and is hereby confirmed in accordance with G.S. 160A-228.

2. The Town Council for the Town of Southern Shores, North Carolina pursuant to authority conferred by Chapter 160A, Article 10 and Article 10A of the General Statutes of North Carolina does hereby levy assessments as contained in the said Assessment Roll, a copy of which is attached as **Exhibit A**.

3. The Town Clerk for the Town of Southern Shores, North Carolina is hereby directed to deliver to the said Assessment Roll to the Tax Collector for the Town of Southern Shores, North Carolina.

4. The Tax Collector for the Town of Southern Shores, North Carolina is hereby charged with the collection of the said assessments in accordance with the procedure established by law.

5. The Town Clerk for the Town of Southern Shores, North Carolina is hereby further directed to publish once on or after the 23rd day of May, 2017 (must be published after the expiration of 20 days from date of adoption), a notice of confirmation of the Assessment Roll, which notice shall set forth the terms of payment of the assessments, with installment payments to be due and payable on the same date as of ad valorem property taxes.

Adopted this _____ day of _____, 2017.

Tom Bennett, Mayor

Attest:

Sheila Kane, Town Clerk

No.	Street Name	Land Area (sq ft) Per Dare County	AREA %	PARCEL	PIN	AREA %	Total Assessment	Annual Assessment (5 yrs)
26	OCEAN BLVD	19000	4.2986%	22813000	987713036128	4.2986%	\$6,447.96	\$1,289.59
24	OCEAN BLVD	19000	4.2986%	22812000	987713036151	4.2986%	\$6,447.96	\$1,289.59
22	OCEAN BLVD	18500	4.1855%	22811001	987713036095	4.1855%	\$6,278.28	\$1,255.66
20	OCEAN BLVD	25000	5.6561%	22811000	987713027938	5.6561%	\$8,484.16	\$1,696.83
18	OCEAN BLVD	19000	4.2986%	28714000	987713027879	4.2986%	\$6,447.96	\$1,289.59
8	SEA BASS CIR	15000	3.3937%	22810000	987713028803	3.3937%	\$5,090.50	\$1,018.10
6	SEA BASS CIR	10000	2.2624%	22809000	987713028880	2.2624%	\$3,393.67	\$678.73
4	SEA BASS CIR	8000	1.8100%	22808000	987713029723	1.8100%	\$2,714.93	\$542.99
2	SEA BASS CIR	20500	4.6380%	22807000	987713029637	4.6380%	\$6,957.01	\$1,391.40
1	SEA BASS CIR	17500	3.9593%	27135000	987713027657	3.9593%	\$5,938.91	\$1,187.78
12	OCEAN BLVD	20500	4.6380%	22802498	987713029576	4.6380%	\$6,957.01	\$1,391.40
30	PELICAN WATCH WAY	6500	1.4706%	22802013	98771712042802	1.4706%	\$2,205.88	\$441.18
32	PELICAN WATCH WAY	6500	1.4706%	22802001	98771712042801	1.4706%	\$2,205.88	\$441.18
26	PELICAN WATCH WAY	6500	1.4706%	22802025	98771712046102	1.4706%	\$2,205.88	\$441.18
28	PELICAN WATCH WAY	6500	1.4706%	22802002	98771712046101	1.4706%	\$2,205.88	\$441.18
22	PELICAN WATCH WAY	6250	1.4140%	22802014	98771712130402	1.4140%	\$2,121.04	\$424.21
24	PELICAN WATCH WAY	6250	1.4140%	22802003	98771712130401	1.4140%	\$2,121.04	\$424.21
18	PELICAN WATCH WAY	6250	1.4140%	22802000	98771712029601	1.4140%	\$2,121.04	\$424.21
20	PELICAN WATCH WAY	6250	1.4140%	22802004	98771712029602	1.4140%	\$2,121.04	\$424.21
14	PELICAN WATCH WAY	6250	1.4140%	22802017	98771712129102	1.4140%	\$2,121.04	\$424.21
16	PELICAN WATCH WAY	6250	1.4140%	22802005	98771712129101	1.4140%	\$2,121.04	\$424.21
10	PELICAN WATCH WAY	6500	1.4706%	22802018	98771712213402	1.4706%	\$2,205.88	\$441.18
12	PELICAN WATCH WAY	6500	1.4706%	22802006	98771712213401	1.4706%	\$2,205.88	\$441.18
6	PELICAN WATCH WAY	6000	1.3575%	22802019	98771712207702	1.3575%	\$2,036.20	\$407.24
8	PELICAN WATCH WAY	6000	1.3575%	22802007	98771712207701	1.3575%	\$2,036.20	\$407.24
2	PELICAN WATCH WAY	6500	1.4706%	22802020	98771712301002	1.4706%	\$2,205.88	\$441.18
4	PELICAN WATCH WAY	6500	1.4706%	22802008	98771712301001	1.4706%	\$2,205.88	\$441.18
1	PELICAN WATCH WAY	10000	2.2624%	22802021	98771711093202	2.2624%	\$3,393.67	\$678.73
3	PELICAN WATCH WAY	10000	2.2624%	22802009	98771711093201	2.2624%	\$3,393.67	\$678.73
5	PELICAN WATCH WAY	10000	2.2624%	22802015	98771702904602	2.2624%	\$3,393.67	\$678.73
7	PELICAN WATCH WAY	10000	2.2624%	22802010	98771702904601	2.2624%	\$3,393.67	\$678.73
9	PELICAN WATCH WAY	10000	2.2624%	22802023	98771702912902	2.2624%	\$3,393.67	\$678.73
11	PELICAN WATCH WAY	10000	2.2624%	22802011	98771702912901	2.2624%	\$3,393.67	\$678.73
13	PELICAN WATCH WAY	10000	2.2624%	22802024	98771702836302	2.2624%	\$3,393.67	\$678.73
15	PELICAN WATCH WAY	10000	2.2624%	22802012	98771702836301	2.2624%	\$3,393.67	\$678.73
8	OCEAN BLVD	20500	4.6380%	022819009	987717018978	4.6380%	\$6,957.01	\$1,391.40
6	OCEAN BLVD	27500	6.2217%	022819010	987717019836	6.2217%	\$9,332.58	\$1,866.52
4	OCEAN BLVD	20500	4.6380%	022819011	987717018812	4.6380%	\$6,957.01	\$1,391.40

100.0000%

100.0000%

442000

150,000.00

30,000.00

ASSESSMENT

150,000.00

X5

150,000.00



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27919

Phone 252-261-2391 / Fax 252-255-0876

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CERTIFICATE OF MAILING OF NOTICES OF PREPARATION OF PRELIMINARY ASSESSMENT ROLL AND PUBLIC HEARING TO PROPERTY OWNERS

TO THE HONORABLE MAYOR AND TOWN COUNCIL OF THE TOWN OF
SOUTHERN SHORES:

I, Sheila Kane, Town Clerk of the Town of Southern Shores, North Carolina, do hereby certify that notices of the preparation of the preliminary assessment roll for the proposed beach nourishment project that would benefit the property owners of those properties shown on the attached Exhibit A and of the public hearing thereon, were mailed by first class mail on the 17th day of April, 2017, to the owners of the real property shown on the said preliminary assessment roll, indicating to each such owner the amount of the assessment against such owner's property.

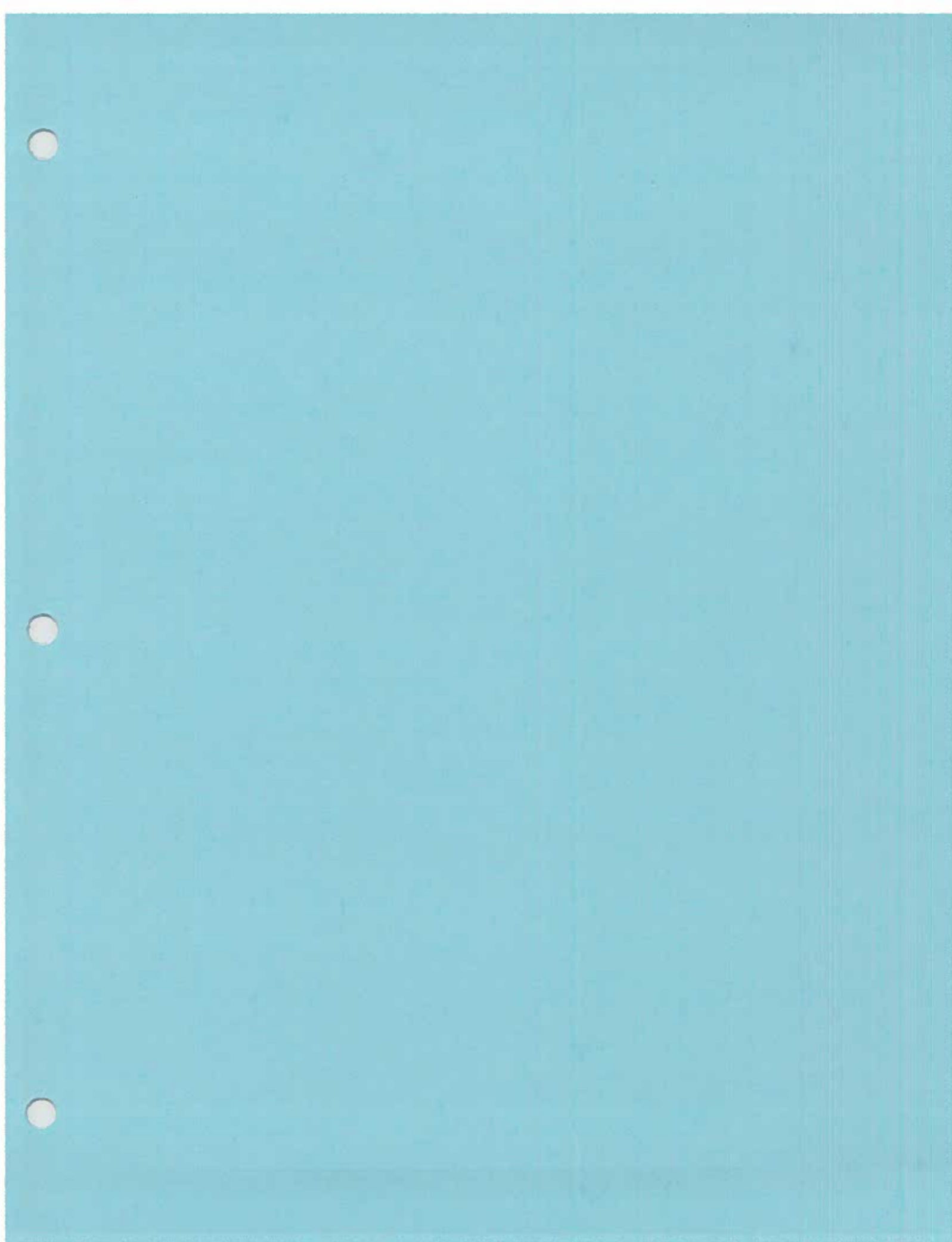
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Southern Shores, North Carolina, this the 17th day of April, 2017.


Sheila Kane, Town Clerk

The "Southern Shores Beach Erosion Control Service District-South", is identified all those residential-zoned real properties, being parcels of land located in the Town of Southern Shores, Dare County, North Carolina and situated north of the southern-most Town Limit of the Town of Southern Shores also being the northern-most Town limit of the Town of Kitty Hawk, East of the eastern right-of-way boundary of North Carolina State Highway 12, West of the Atlantic Ocean, and South of the southern boundary of a parcel of land owned by the Southern Shores Civic Association, Inc., Dare County Parcel Identification Number (PIN) 987713035293 and commonly known as "Ocean View Loop Beach Access".

Map (yellow highlighted area):





**Town of Southern Shores
Budget Amendment Number # 17**

Streets Increases			Streets Decreases		
Account Number	Description	Amount	Account Number	Description	Amount
40-39909	<u>Revenues</u> Unassigned Fund Balance	150,000			
57-50156	<u>Expenditures</u> Beach Nourishment	150,000			

Explanation: Special Assessment amount of beach nourishment project. This will be paid back via speical assessment over 5 yrs.

Recommended By:

J. Peter Rascoe, III

Approved By:

Tom Bennett, Mayor

Date _____

INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT** dated as of April __, 2017 (the "*Interlocal Agreement*") among the **COUNTY OF DARE, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the "*County*"), the **TOWN OF SOUTHERN SHORES, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina (the "*SS*");

WITNESSETH

WHEREAS, the Town has determined to undertake a beach nourishment project within its Town as they are authorized to do under North Carolina law;

WHEREAS, the County has determined to assist the Town in financing the beach nourishment projects from the County's beach nourishment fund;

WHEREAS, the Town and the County have determined that they can achieve significant cost savings by cooperating to construct the beach nourishment projects by entering into a single construction contract for such projects;

WHEREAS, under Article 20 of Chapter 160A of the North Carolina General Statutes, as amended (the "*Interlocal Act*"), municipalities and counties are authorized to enter into interlocal cooperation undertakings with other local governments for the joint exercise of any power, function, public enterprise, right, privilege, or immunity of local governments in North Carolina;

WHEREAS, the parties to this Interlocal Agreement desire to set forth their agreement herein;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

In addition to the terms defined above, the following terms have the meanings herein as set forth therefor, unless the context otherwise requires:

"Beach Nourishment Fund" means the fund held by the County from occupancy tax proceeds and dedicated to beach nourishment projects in the County.

"Contracts" means, collectively, the Dredge and Construction Contract and the Project Management Contract.

"Construction Fund" means the fund established under Section 4.2.

"County Contribution" means the amount that the County will pay from the Beach Nourishment Fund towards each Project as set forth Section 4.1.

"Dredge and Construction Contract" means the primary contract with the winning bidder for the construction of the Projects.

"Duck Project" means the portion of the Projects within the Town limits of Duck.

"Kill Devil Hills Project" means the portion of the Projects within the Town limits of Kill Devil Hills.

"Kitty Hawk Project" means the portion of the Projects within the Town limits of Kitty Hawk.

"Project Manager" means Coastal Planning & Engineering of North Carolina, P.C.

"Project Management Contract" means contract with the Project Manager to monitor and manage the construction of the Projects on behalf of the Town.

"Projects" means the beach nourishment projects in each of the Town that will be described in detail in the Dredge and Construction Contract.

"Town Representatives" means the duly authorized representative of the Town authorized to execute all documents contemplated by this Interlocal Agreement and to administer this Interlocal Agreement on behalf of the Town.

ARTICLE II

STATEMENT OF PURPOSE

The Town and the County are entering into this Interlocal Agreement under the Interlocal Act to cooperate in the construction of the Projects by having the County enter into the Contracts for the Projects to achieve overall savings on the construction costs. This Interlocal Agreement sets forth the terms under which the County will enter into the Contracts for the Projects and the parties understanding as to the administration of the construction process, the financing of the Projects and the liabilities associated with the construction of the Projects.

ARTICLE III

CONSTRUCTION AND ADMINISTRATION OF PROJECTS

Section 3.1. ***Administration of Projects.*** The County will enter into the Contract for the Projects or modify the existing contract between County and contractor for the construction of the Duck, Kitty Hawk and Kill Devil Hills projects.. SS will be solely responsible for the administration of the SS Project. The Town will designate a Town Representative or Representatives that are authorized by his or her respective Town to execute all documents contemplated by this Interlocal Agreement and to administer this Interlocal Agreement on behalf of the Town. The Project Manager will manage the Projects on a day-to-day basis on behalf of each Town under the Project Management Contract. The Project Manager will provide periodic updates to the Town and the County on the Projects as required by the Project Management Contract.

Section 3.2. ***Project Modifications.*** The Town shall have the right, power and authority to cause modifications to the design, scope, construction and other aspects of its Project (the ***"Project Modifications"***). The Town shall have the right to enact a Project Modification that increases the cost of its Project as long as the Town accepts in writing the sole responsibility for the additional cost of its

Project unless the County and the Town agree otherwise in an amendment to this Interlocal Agreement. Any Project Modifications shall be memorialized in writing and a copy of same shall be submitted by the Town implementing the Project Modification to the County and the other Town at least ten (10) business days before the effective date of the Project Modification. In no event shall a Project Modifications (i) materially impact any of the other Projects without the applicable Town's prior written consent or (ii) increase the County Contribution for such Project without the County's prior written consent. The County agrees to sign any change order to the Contracts submitted in accordance with the terms of this Section 3.2.

Section 3.3. **Construction Meetings.** In addition to the construction meetings required in the Dredge and Construction Contract, the County may call joint meetings of the County and the Town Representatives to receive construction updates and to discuss matters pertaining to the Projects and this Interlocal Agreement.

Section 3.4. **Payment of Invoices.** All invoices submitted pursuant to the Contracts for the Projects will be reviewed by the Project Manager and submitted to the Town for approval. Once approved by the Town, unless payment is to be made to the Project Manager, the Project Manager will submit the invoice on behalf of the Town to the County for payment. Unless the County has been informed in writing by a Town Representative of an objection to paying a particular invoice, the County will promptly pay all invoices submitted and approved by the Project Manager in accordance with the instructions on the invoice. The County is not responsible for independently reviewing the validity of the invoices for payment under the Contracts. The County will make all reasonable efforts to effect the payment of the invoices in accordance with the Contracts.

With respect to the invoices submitted under the Dredge and Construction Contract, as part of its approval and submission to the County, the Project Manager will identify the Project with which the payment is associated, or if associated with multiple Projects, how the cost should be allocated among Projects. The County will allocate the Project costs under the Dredge and Construction Contract to each of the Projects as set forth in the Project Manager's submission. The Project costs for invoices submitted under the Project Management Contract will be allocated among the Projects on pro-rata basis based on total costs of the Projects.

Section 3.5. **Insufficiency of Funds.** The County will account for the amount of Project costs that are allocable to each Project as set forth in Section 3.4. Notwithstanding anything herein, the County will not be responsible for paying Project Costs from the Construction Fund allocable to a particular Project if the County's records show that there are insufficient funds available from the sources for payment of that Project as set forth in Article IV. In such event, the Town for which funds are insufficient will be solely responsible for payment of such excess costs of the Project.

ARTICLE IV

FINANCING OF PROJECTS

Section 4.1. **Project Funding.** The total estimated cost of the project, including pre-construction costs, is \$1,000,000. County will contribute an amount equal to 50% of the total cost of the project, not to exceed \$500,000.00. All other costs will be paid by Town.

The County will pay its share of the Projects as set forth above from the Beach Nourishment Fund held by the County. The Town will have received all required approvals and will have all funding

in place and available for use on or before the date that the County signs the Dredge and Construction Contract.

Section 4.2. **Construction Fund.** The County will establish a Construction Fund to be held by a depository to be selected by the County. Town will provide County with its share of the costs to be deposited in the Construction Fund. Once the Town has deposited its funds into the Construction Fund, all costs of the Contracts will be paid from the fund. It is the intent of the parties hereto that the Town will be required to pay their entire contribution towards the Projects as set forth in Section 4.1 and that any savings from the total Project costs will be retained by the County in the Beach Nourishment Fund and any costs in excess of the estimated shall be paid by Town.

Funds will be requisitioned from the Construction Fund as set forth in Article III. If funds in the Construction Fund are insufficient to complete the Project, the will be solely responsible for any deficiency for such Project. If the actual costs of any of the Projects is less than the Total Project Cost as set forth in Section 4.1, then the excess funds will be retained by the County in the Beach Nourishment Fund.

Section 4.3. **County Contributions to the Town to be used for Debt Service.** None.

ARTICLE V

DISPUTES AND MEDIATION

Section 5.1. **Agreement to Work Together to Settle Disputes.** This Interlocal Agreement shall be liberally construed in order to promote a harmonious relationship between the parties with regard to the completion of the Projects. The County and the Town accept the relationship of trust and confidence established between each of the parties by this Interlocal Agreement. If a problem or dispute arises that this Interlocal Agreement does not directly or indirectly address, the County shall call a meeting with the Town Representatives to discuss and the County and the Town covenant to work with one another in good faith to determine a mutually satisfactory solution.

Section 5.2. **Mediation.**

a. **Agreement to Mediate Dispute.** The County and the Town will attempt to settle any dispute, claim or controversy arising out of this Interlocal Agreement through consultation and negotiation in good faith and in a spirit of mutual cooperation as set forth in Section 5.1. If those attempts fail, then the claim or dispute will be mediated by a mutually-acceptable mediator before any party resorts to court action. Mediation is a process in which parties attempt to resolve a dispute by submitting it to an impartial, neutral mediator who is authorized to facilitate the resolution of the dispute, but who is not empowered to impose a settlement on the parties.

b. **Demand for Mediation.** A demand for mediation must be submitted in writing to the other parties to this Interlocal Agreement. The demand for mediation shall proceed in advance of legal or equitable court proceedings, which shall be stayed pending mediation for a period of 60 days from the date of the demand for mediation, unless stayed for a longer period by agreement of the parties or by court order.

c. **Selection of Mediator.** The parties shall jointly select a mediator within 45 days after written notice by either party demanding mediation. The mediator shall be a member of the North Carolina State Bar and residing in the First Judicial District of North Carolina. Failing this joint action, the parties shall each separately designate a mediator and, within 15 days after their appointment, the two

designated mediators shall jointly designate a third mediator. The third mediator shall then become the sole mediator for purposes of this paragraph. The failure of either party to appoint a mediator within the time allowed shall be deemed equivalent to appointing the mediator appointed by the other party. Each mediator shall be disinterested in the subject matter of this Interlocal Agreement.

d. *Mediation Procedure.* The mediation procedure shall be that which is contained in the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted pursuant to N.C. Gen. Stat. Sec. 7A-38.1 as same may be amended from time to time.

e. *Miscellaneous provisions.*

(1) The mediation fee, if any, shall be divided equally among the parties involved.

(2) Each party shall pay its own attorneys' fees and other costs.

(3) Before the mediation begins, the parties agree to sign a document limiting the admissibility in arbitration or any civil action of anything said, any admission made, and any documents prepared, in the course of the mediation.

(4) If any party commences a court action based on a dispute or claim to which this paragraph applies without first attempting to resolve the matter through mediation, then, in the discretion of the judge, that party shall not be entitled to recover attorney's fees even if they would otherwise be available to that party in any such court action. However, the filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not in itself constitute a loss of the right to recover attorney's fees under this provision.

(5) The following matters are excluded from the requirement of mediation hereunder: (a) good faith efforts to resolve the dispute under these procedures have been unsuccessful, or (b) interim relief from a court is necessary to prevent serious and irreparable injury to one party or to others.

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ARTICLE VI

LIABILITIES AND INDEMNIFICATION

The parties acknowledge that the SS project will be part of the existing Duck, Kitty Hawk and Kill Devil Hills project. Any liabilities arising from the Duck Project will be the sole responsibility of Duck. Any liabilities arising from the KDH Project will be the sole responsibility of KDH. Any liabilities arising from the Kitty Hawk Project will be the sole responsibility of Kitty Hawk. Any liabilities arising from the SS Project will be the sole responsibility of SS. Any liabilities arising from the Construction Contract or the Projects as a whole will be the responsibility of each of the Town in proportion to the cost of its particular portion of the Projects to the overall costs of the Projects.

The Town, in the same manner as set forth in the paragraph above with respect to its liabilities under this Interlocal Agreement, will indemnify, protect and save the County and any member of the governing body, officer, agent or employee thereof, acting in such capacity, harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting, directly or indirectly, from the Project or the Contracts, or from injuries to person or property occurring from or related to the Project or the Contracts. It is intended that except as to the provision of funds as set for the in Article IV and the indemnities provided in the following paragraph, County shall have no other monetary or financial liabilities, risks or obligations of any kind arising from the Project or the Contracts. The indemnification arising under this Article shall survive the termination of this Interlocal Agreement and continue in full force and effect notwithstanding the payment in full of all obligations under this Interlocal Agreement.

The Town recognizes that the County is entering into this Interlocal Agreement for the purpose of assisting the Town in the execution and administration of the Contracts in order to achieve savings in the costs of the Project. The County will indemnify, protect and save the Town and any member of the governing body, officer, agent or employee thereof, acting in such capacity, harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting, directly or indirectly the failure of the County to provide the funding and enter into the Contracts in accordance with the terms of this Interlocal Agreement and to pay the invoices under the Contracts in accordance with the terms of Section 3.4. The indemnification arising under this Article shall survive the termination of this Interlocal Agreement and continue in full force and effect notwithstanding the payment in full of all obligations under this Interlocal Agreement.

ARTICLE VII

PERFORMANCE OF GOVERNMENT FUNCTIONS

Nothing contained in this Interlocal Agreement shall be deemed or construed so as to in any way estop, limit, or impair the Town or the County from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions pursuant to applicable law.

ARTICLE VIII

DEFAULTS AND REMEDIES

The County and the Town, or any one of them, will be in default under this Interlocal Agreement if it fails to comply with the terms of this Interlocal Agreement.

If an event of default occurs as set forth in the preceding paragraph, and after following the procedures and requirements of Article V herein, each party hereto will have all remedies available at law or in equity to enforce any of the terms and provisions hereof, including, but not limited to, or actions at law for damages and equitable actions seeking rescission of this Interlocal Agreement and/or injunctive relief (mandatory or prohibitory) to prevent the breach or threatened breach of any term or provision thereof or to enforce the performance of all terms and conditions of this Interlocal Agreement. All remedies are cumulative; the exercise of any one or more of them will not in any way alter or diminish the rights of the exercising party to any other remedy provided herein or at law or in equity. Action under this Interlocal Agreement will not be taken, however, until the non-defaulting party or parties gives the defaulting party or parties written notice of the event of default and a reasonable opportunity to cure the event of default.

ARTICLE XIII NOTICES

Except as otherwise provided in this Interlocal Agreement, all notices, certificates, requests, requisitions, or other communications given pursuant to this Interlocal Agreement must be in writing and will be sufficiently given and will be deemed given when delivered by hand or mailed by certified mail, postage prepaid, addressed as follows:

County:	Attention County Manager PO Box 1000 Manteo, NC 27954
Duck:	Attention Town Manager PO Box 8369 Duck, NC 27949
KDH:	Attention Town Manager PO Box 1719 Kill Devil Hills, NC 27948
Kitty Hawk:	Attention Town Manager PO Box 549 Kitty Hawk, NC 27949
Southern Shores:	Attention Town Manger PO Box Southern Shores, NC 27949

ARTICLE IX MISCELLANEOUS

Section 9.1. *Amendment.* This Interlocal Agreement may be amended through a supplement approved in writing by the County and Town.

Section 9.2. **Severability.** If any section of this Interlocal Agreement is deemed to be illegal or otherwise unenforceable, it is the intent of the parties hereto that all other provisions of this Interlocal Agreement shall remain in full force and effect.

Section 9.3. **Governing Law.** This Interlocal Agreement is to be governed by and interpreted in accordance with the laws of the State of North Carolina.

Section 9.4. **Time is of the Essence.** Time is of the essence in this Interlocal Agreement.

Section 9.5. **Execution in Multiple Counterparts.** This Interlocal Agreement may be executed in multiple counterparts, each of which constitutes a completed document.

Section 9.6. **Effective Date.** This Interlocal Agreement takes effect on its execution by the County and the Town.

Section 9.7. **Termination.** This Interlocal Agreement shall terminate under either of the following two (2) circumstances: (1) when all of the following events have occurred: (a) the completion of all of the Projects as evidenced by certificates of completion issued to the County and the Town by the Project Manager, (b) the balance in the Construction Fund is zero, and (c) all duties and responsibilities of the County and Town set forth in this Interlocal Agreement have been completed or waived in writing by the parties; or (2) the date on which the County and Town mutually agree to terminate this Interlocal Agreement by action of their respective governing boards or councils.

Section 9.8. **Public Information.** All public information related to the Projects shall be the responsibility of the Town.

IN WITNESS WHEREOF, the Chairman of the Board of Commissioners of the County and the Mayor of Southern Shores have each executed this Interlocal Agreement to evidence the agreement of the parties hereto and the respective Town Clerks and the Clerk to the Board of County Commissioners have affixed the seal of the Town and the County, as applicable, to this Interlocal Agreement.

COUNTY OF DARE, NORTH CAROLINA

[SEAL]

By: _____
Chairman

Attest:

Clerk to the Board of County Commissioners

**This instrument has been preaudited
in the manner required by the Local
Government Budget and Fiscal Control Act.**

**Finance Officer
County of Dare, North Carolina**

[SEAL]

TOWN OF SOUTHERN SHORES, NORTH CAROLINA

By: _____
Mayor

Attest:

Town Clerk

**This instrument has been preaudited
in the manner required by the Local
Government Budget and Fiscal Control Act.**

**Finance Officer
Town of Southern Shores, North Carolina**